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**CCA Case No. 20174**

**Anthony Evans**

**Investigation Report and Finding**

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**Joseph Vesper**  
**Investigator**

**Gabriel Davis**  
**Director**

**Date: August 26, 2022**

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## COMPLAINT SUMMARY

Date: August 7, 2020

Time: 04:00:00 PM

Location: 1307 Main Street, Cincinnati, OH 45202

CCA Receipt: August 31, 2020

On August 7, 2020, around 4:00 PM, Ms. Kristin Dockendorff witnessed two officers, both white, one male with a bald head and one female with dark hair, act extremely violent towards a mentally unstable man who resisted arrest. The male officer threw the man to the ground, pinned his body under a parked vehicle, hit his head on the sidewalk, and his neck was pressed into the corner of the gutter. The female officer yelled at the mentally unstable man that was on the ground and tased him twice. She then hit him with a baton. Other witnesses on the street begged the officers to stop hurting the man but the male officer drew his "gun" and pointed the barrel in a sweeping motion at the crowd, this included two kids near him. He yelled at everyone to get back. Finally, several additional police cars arrived, and they pulled the officer off the man on the ground.

## INVOLVED SUBJECT STATEMENTS

### **Kristen Dockendorff**

Ms. Kristin Dockendorff, F/B/43, was unable to be interviewed. CCA attempted to contact her multiple times by telephone and email but there was no response. To date, Ms. Dockendorff has not contacted CCA since filing her Complaint.

### **Mr. Anthony Evans**

Mr. Anthony Evans, M/B/39, was unable to be interviewed. CCA attempted to contact him by mail, but there was no response. To date, Mr. Anthony Evans has not contacted CCA.

## INVOLVED OFFICER STATEMENTS

### **Officer Barnabas Blank**

Officer Barnabas Blank, #PO039, M/W/42, MHRT trained, 11/11/2009, is currently assigned to District 1 and was training Officer Merredeth Newman on August 7, 2020. Officer Blank has been a CPD member since 2007. Officer Blank was on routine patrol, in uniform and operated a marked cruiser with Officer Merredeth Newman; his BWC was activated.

CCA interviewed Officer Blank on June 23, 2022, at 10:53 AM. He provided the following information:

Officers Blank and Newman were dispatched by the Emergency Communications Center (ECC) to a complaint call where a man was seen urinating on a business. Upon arrival the officers found the man (identified later as Mr. Anthony Evans) and talked with him. Mr. Evans was sitting on the curb with a beer in his hand, other cans of beer were near him, and his eyes were bloodshot. The man appeared intoxicated. Officer Blank did not know Mr. Evans had mental health issues.

Officer Blank decided they would write Mr. Evans a ticket and then send him on his way. Officer Newman went to the cruiser to get the paperwork and Officer Blank continued to talk to Mr. Evans. Mr. Evans stood and started to leave. In response, Officer Blank told him that he was not free to go, but Mr. Evans continued to walk past Officer Blank. Officer Blank placed a hand on Mr. Evans arm and Mr. Evans punched Officer Blank in the right jaw. Quickly Officer Blank tried to position Mr. Evans in a position to effectuate an arrest, but it didn't work, because Mr. Evans suddenly grappled him.

Officer Newman ran up to assist and yelled at Mr. Evans to let go of Officer Blank. She deployed her TASER after she warned him several times, but it had no effect. Officer Blank tried a displacement technique, a "hip toss," to get Mr. Evans off him, but as he attempted the hip toss Mr. Evans hand struck him in the right knee, which caused them both to tumble to the ground. Officer Blank hit his head hard on the concrete and lost semi-consciousness.

When Officer Blank came too, he realized he was on top of Mr. Evans who now had his arm around his neck; he had trouble breathing. Officer Blank heard Officer Newman yell at Mr. Evans to let go of his neck and she remembered her pull out her baton. Officer Newman struck Mr. Evans several times in the leg and a bystander jumped into the fray to help. Officer Blank bit Mr. Evans hand out of desperation and immediately unholstered his firearm to attempt to stop the choke, fearing for his life. However, Officer Blank realized a shot was impossible and holstered his firearm. Officer Blank informed CCA that if anyone in the crowd had the firearm pointed at them, it was not his intention. At the same time a bystander took a hold of Mr. Evans right arm and pried it off Officer Blank's neck.

Officer Blank was able to break free, pulled Mr. Evans onto the sidewalk, put a restraint knee on Mr. Evans's back, and effectuate handcuffs on Mr. Evans. Officer Blank was dazed and injured. Cincinnati Fire Department (CFD) arrived and transport him to the emergency room. It took Officer Blank six weeks to fully recover.

Officer Blank did not know that Mr. Evans had any mental issues prior to the incident, did not remember a previous encounter and arrest he had with Mr. Evans prior to seeing him that day, and stated while he remained pleasant and nice to Mr. Evans once he was punched there was nothing else, he could do to deescalate the situation. The force used was "appropriate, necessary, and perhaps even a little light."

Mr. Evans was transported to the Hamilton County Justice Center (HCJC) by Officer John Jefferies. Last he heard Mr. Evans case for the assault of an officer was dismissed and Mr. Evans was sent to several years in a mental treatment institute.

### **Officer Merredeth Newman**

Officer Merredeth Newman, #PO507, F/W/27, is currently assigned to District 5 and she has been a CPD member since 2019. Since she is a newer officer, MHRT training was included in her academy training. Officer Newman was on routine patrol with Officer Barnabas Blank as a trainee, she was in uniform and operated a marked cruiser with Officer Blank; her BWC was activated.

CCA interviewed Officer Newman on June 22, 2022, at 12:00 PM. She provided the following information:

Officer Newman's initial statement corroborated Officer Blank's. She added that upon arrival they talked to Mr. Evans and ascertained that he had urinated on the business after a store owner identified Mr. Evans as the perpetrator. Officer Newman went to her cruiser to write a ticket. As she wrote the ticket, she witnessed Mr. Evans suddenly punch Officer Blank in the face and went to choke him. She went to Officer Blank's aid, warned Mr. Evans that he would be tased if he did not let go of Officer Blank, and tased him three times when he did not comply. The first was a dry stun in the arm, but it had no effect. She then fired the TASER twice at Mr. Evans's arm and it also had no effect. Officer Newman then resorted to her baton and struck Mr. Evans in the leg. She purposely aimed for green zones, "areas that wouldn't cause any fatal injuries such as the legs, based on what target is presented."

The two were on the ground and Mr. Evans choked Officer Blank. The baton also seemed to have no effect. A citizen came to aid Officer Blank and pulled Mr. Evans arm off Officer Blank's neck. She could not recall if Officer Blank pulled out his firearm or not, but eventually she and Officer Blank were able to control Mr. Evans and handcuff him. A crowd had gathered and yelled at them. Sergeant James Perkins, Lieutenant Chantia Pierson, and multiple officers then arrived to assist, and Officer Shayna Norman took Mr. Evans to jail.

Officer Blank seemed dazed and there was a scrape on the back of his head. She could not recall if Mr. Evans had any injuries, but she then rode with Officer Blank to the hospital to be evaluated. As soon as Officer Blank was punched in the face, she believed deescalation was impractical and impossible. However, once in handcuffs there was no more force used on Mr. Evans and he submitted to arrest.

## OFFICER WITNESS STATEMENTS

### **Sergeant James Perkins**

Sergeant James Perkins, #SO375, M/W/53, is currently assigned to District 1, and he has been a CPD member since 1997. Sergeant Perkins was on routine patrol, in uniform and operated a marked cruiser; his BWC was activated.

CCA interviewed Sergeant Perkins on June 21, 2022, at 10:30 AM. He provided the following information:

Sergeant Perkins responded to a disorderly conduct call. He arrived and Officer Blank was in control of the suspect. He believed Officer Blank had just been in a fight and was disoriented, based on his own observations. Officer Blank had Mr. Evans in handcuffs. Officer Norman took Mr. Evans into custody. Officer Blank was disoriented, and C F D was called to address his injuries.

Multiple officers including Lieutenant Pierson arrived at the scene and controlled it. The crowd that had gathered was very loud but did not act disorderly and seemed controlled. The CFD was called to address Officer Blank's injury.

## WITNESS STATEMENTS

## **Bystander**

Witness A, M/B/Age Unknown, was unable to be interviewed. CCA was unable to contact him via phone. To date, Witness A has not contacted CCA.

## **EVIDENCE**

### **Police Documents**

CCA reviewed all CPD-related forms, including but not limited to police incident reports, the IIS Report, and information from CPD's Records Management System (RMS).

#### *Incident Detail Report(s):*

CPD200807000916

Axon Standards Report EVT-00004875: Use of Force Report completed by Sgt Andrew Burger

Officer Injury Report ETS #2020-253119: Injury to Officer Blank

IIS Report: 2020-185

TASER Download Report: (Officer Newman) (TASER DEPLOYED 3 TIMES) (1.17s, 4.96s, 4.98s)

CPD F648 Citizen Complaint

#### *IIS Report:*

IIS investigated this incident and exonerated all officers involved for Excessive Force.

### **Computer Aided Dispatch (CAD)**

| <b><u>Date</u></b> | <b><u>Time</u></b> | <b><u>Call Notes</u></b>  |
|--------------------|--------------------|---|
| 08/07/2020         | 15:30:58           | Phone Call, Male Subject urinated on front door of location, Subj is M/B/40's/Thin/Grey Shirt/No Weapons/On Foot/NB on Main St. |
|                    | 15:34:36           | Unit 1227, Officers Blank and Newman Assigned.  |
|                    | 15:55:29           | Unit 1227, Officers Blank and Newman Arrived.   |
|                    | 16:05:15           | Unit 1210, Sergeant Perkins Assigned.   |
|                    | 16:08:22           | They need us now.   |
|                    | 16:08:43           | Tasing.   |
|                    | 16:12:49           | Unit 1234, Officers John Jefferies and Shayna Norman will have prisoner in their car once checked by fire.                      |
|                    | 16:15:44           | Unity 1275, Officer Elliott Miller, is going to the hospital with 1227A and 1227B still on scene.                               |
|                    | 17:09:33           | Secondary Location, ER.   |

### **Body Worn Camera (BWC)**

Officer Barnabas Blank  
Officer Merredeth Newman  
Officer Jennifer Hoff  
Officer Brett Loeding  
Officer Steven Mittermeir  
Officer Savon Kelsey

Officer Bryan Gabel  
Officer Michael Lowe  
Officer Kevin Martin  
Officer Ross McNicol II  
Officer Tyler Merritt  
Officer Dustin Peet  
Officer Tyler Whittaker  
Officer John Jefferies  
Officer Shayna Norman  
Officer Elliott Miller  
Sergeant James Perkins  
Sergeant Andrew Burger  
Lieutenant Chantia Pearson

### **Officer Barnabas Blank**

The events recorded by Officer Barnabas Blank's BWC occurred on August 7, 2020, starting at 15:55:19, according to the recording and timestamp of Officer Blank's BWC. A review of the recording reveals the following:

The first activation occurred at timestamp 15:55:19. Officers Blank and Newman arrived at the store that called in the complaint, they interviewed the complaint caller, and Mr. Evans was identified as the person who urinated on the businesses glass front door. The officers approached Mr. Evans, who held an open beer can, talked to him about the incident, and got an admission from him. Officer Blank then requested Mr. Evans information, at first Mr. Evans refused to give his personal information, but then he complied. Officer Blank then directed Officer Newman to fill out a ticket. Officer Newman went to fill out the ticket at the police cruiser.

Officer Blank tried to get Mr. Evans explained he would simply get a ticket. Several beer cans were seen near Mr. Evans and Officer Blank asked Mr. Evans if he had consumed any alcohol. Mr. Evan's appeared agitated at this time and replied, "Do not get smart with me too much!" At that time Officer Blank told Mr. Evans that he was under arrest and to place his hands behind his back. Mr. Evans replied, "No, I am not going to jail. You ain't going to touch me!" He then stood up and tried to walk past Officer Blank who then placed a hand on his arm. Mr. Evans appeared to make a fist and appeared to swing at Officer Blank. The BWC then fell off Officer Blank's front vest, and at 16:03 the BWC goes dark. When visual returned, after the attack at 16:06:48, Officer Blank said that he had been hit in the back of the head. CFD was then called.

### **Officer Merredeth Newman**

The events recorded by Officer Merredeth Newman's BWC occurred on August 7, 2020, starting at 15:55:52, according to the recording and timestamp of Officer Newman's BWC. A review of the recording reveals the following:

The first activation occurred at 15:55:52, timestamp, and is corroborative of Officer Blank's BWC. Officer Newman's recording additionally revealed she was working on paperwork when she suddenly got out of the cruiser and ran to assist Officer Blank. Mr. Evans had his arms wrapped around the back of Officer Blank's neck and Officer Newman ordered Mr. Evans to release him, "Get off him or you are going to get tased! Get off him!" However, Mr. Evans failed to comply and was dry stunned in the arm by Officer Newman. Mr. Evans then tried to grab Officer Newman's TASER and was ordered again to cease and desist, but he did not and as a result the TASER was fired. The barbs struck Mr. Evans legs but did not have any effect.

Officer Blank at that time conducted a back leg sweep and Mr. Evans fell into Officer Blank's left leg. The two went to the ground and Mr. Evans reached from behind, grabbed ahold of Officer Blank's neck, and choked him. Officer Newman yelled another TASER warning, but Mr. Evans still did not comply. A second TASER cartridge was fired, also with no effect. Officer Blank and Mr. Evans rolled on the ground into a parked vehicle. While Mr. Evans continued to choke Officer Blank, Officer Evans radioed for units and deployed her baton. She struck Mr. Evans in the left leg several times but also, to no effect.

Officer Blank let out a gasp for air and suddenly a bystander rushed in to help. The bystander pulled the arm off Officer Blank's neck, and he was able to maneuver out of the chokehold. Officer Blank was still stuck with his arm underneath Mr. Evans and Mr. Evans reached up and tried to shove his fingers into Officer Blank's eyes. Officer Blank had a large laceration on the back of his neck. Several more baton strikes were given by Officer Newman to Mr. Evans's leg and finally Officer Blank was able to disengage. Handcuffs were placed on Mr. Evans, Officer Blank put his knee on his back and was able to finally restrain him.

By this time a crowd had gathered, and someone yelled that when they tried to help Officer Blank, he, "pointed a gun at us!" Officer Blank responded, "I didn't know what you were trying to do!" Other officers had now arrived and helped keep Mr. Evans under control. Sergeant Perkins helped control the scene. Sergeant Perkin's then told Officer Blank to get medical attention and swapped TASERs with Officer Newman. CFD appeared on scene and helped Officer Blank.

### **Other Officer BWCs**

The events recorded by Officer Jennifer Hoff, Officer Brett Loeding, Officer Steven Mittermeir, Officer Savon Kelsey, Officer Bryan Gabel, Officer Michael Lowe, Officer Kevin Martin, Officer, Ross McNicol II, Officer Tyler Merritt, Officer Dustin Peet, Officer Tyler Whittaker, Officer John Jefferies, Officer Shayna Norman, Officer Elliott Miller, Sergeant James Perkins, Sergeant Andrew Burger, were reviewed by CCA but were found to either be corroborative of Officer Newman and Blank's BWCs or irrelevant for evidentiary purposes.

## **SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS**

### **Pointing of Firearm Statements**

Ms. Dockendorff in her complaint believed the firearm was intentionally aimed at the crowd, Officer Blank, "pointed the barrel of his gun in a sweeping motion at the crowd (including two kids near him), yelling for us to get back."

Officer Blank stated during his CCA interview that he withdrew his firearm to neutralize Mr. Evans and because he was in fear for his life. However, once he realized he did not have a good shot Officer Blank re-holstered his firearm. If anyone in the crowd had the firearm pointed at them, it was not his intention.

The BWCs of Officer Blank and Newman do not show Officer Blank withdraw his firearm. Mr. Evans was not in handcuffs at that time and both Officer Blank and Mr. Evans were locked together on the ground. Notably on the BWC, Mr. Evans appeared to still resist arrest as he put his hand in Officer Blank's face and reached for his neck. However, at 16:04:01 on Officer Newman's BWC, Officer Blank appears to reach for his hip and then turns slightly to face to the location of the crowd. He then yelled, "back get back, get back!" Later after the arrest had been effectuated someone in the crowd yelled out at timestamp 16:05:12, "He pointed the gun at us,

we were trying to help him,” to which Officer Blank responded, “I didn’t know what you were trying to do!”

**Note:** CCA was unable to interview Ms. Dockendorf, Mr. Evans, and the unknown bystander. although multiple attempts were made to reach the subjects via phone number, email, and mail.

## AUTHORITIES

CPD Manual of Rules and Regulations §1.25 Failure of Good Behavior.

CPD Procedure §12.550 Discharging of Firearms by Police Personnel.

CPD Procedure §12.545 Use of Force (In-Part).

*Graham v. Connor*, 490 U.S. 386 (1989).

Tactical Patrol Guide (in part): Utilizing Non-Lethal Options.

### Improper Pointing of Firearm

- i. CPD Manual of Rules and Regulations  
§1.25 Failure of Good Behavior  
A. Members of the Department shall only draw or display their firearms in time of demonstrated need or for official inspection. Members shall not use or handle firearms in a careless or imprudent manner.
- ii. CPD Procedure  
§12.550 Discharging of Firearms by Police Personnel  
At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm, with finger outside the trigger guard and have it ready for self-defense. The finger is only to be placed on the trigger when on target and ready to engage a threat.

### Excessive Force

- iii. CPD Procedure §12.545 Use of Force (in-part).  
Policy:  
The Cincinnati Police Department (CPD) recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws and constitution of the state of Ohio, the charter, and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices, and training.  
  
A police officer’s right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. (...) The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

*When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers*

must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

De-escalation – Using non-confrontational verbal skills, empathy, and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance, and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force. (...) Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend promptly.

Hard Hands – The use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics.

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Officers must avoid using unnecessary violence. *Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject.*

Use of Force Continuum: Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or deescalate as the situation evolves.

Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death (and the Officer may respond accordingly)

### **Use of the Monadnock Baton (in-part)**

Monadnock PR-24/ Monadnock Auto-Lock Batons: Monadnock PR-24 and Auto-Lock batons are impact tools that offer a less lethal method for self-defense, defense of another, or subduing and apprehending subjects who are actively resisting arrest. Compared to empty hand counter strikes, the baton is less likely to cause injury to the officer and provides added distance from the subject. Officers should target center mass of a subject's torso, arms, and legs, and avoid the subject's head, throat, neck, heart, and groin, unless threatened with serious physical harm.

#### **G. Use of the Monadnock Auto-Lock Baton and Monadnock PR-24 Baton**

1. The Monadnock Auto-Lock Baton may be deployed on a suspect actively resisting arrest when there is probable cause to arrest the suspect, or to defend oneself or another from active aggression.

a. Uniformed personnel assigned to patrol must have the Auto-Lock baton readily available.

1) Uniformed personnel have the option of wearing the Auto-Lock baton on the gun belt if space is available. The baton may also be carried on the exterior vest carrier.

- b. When using the Monadnock Auto-Lock Baton, target the center mass on a subject's torso, arms, and legs. Avoid the head, neck, throat, heart, and genitals unless threatened with serious physical harm.
- c. Officers should avoid using the Monadnock Auto-Lock Baton on persons who reasonably appear to be, or are known to be, young children, elderly, medically infirm, pregnant, or users of a cardiac pacemaker. Officers are not prohibited from using the Monadnock Auto-Lock Baton on such persons, but use is limited to those exceptional circumstances where the potential benefit of using the Monadnock Auto-Lock Baton (i.e., injury reduction) reasonably outweighs the risks and concerns.

### **Use of Taser (in-part)**

TASER: The TASER is an electronic control device that is a non-lethal force alternative used to assist officers in the performance of their duties. The TASER is designed for self-defense or to temporarily immobilize a subject who is actively resisting arrest. It generates electricity in a small, hand-held, battery-operated unit about the size of a handgun.

Procedure:

#### **A. Use of the TASER**

1. The TASER may be deployed on a suspect actively resisting arrest when there is probable cause to arrest the suspect, or to defend oneself or another from active aggression.
  - a. An individual simply fleeing from an officer, absent additional justification, (i.e., reasonable suspicion to detain or probable cause to arrest) does not warrant the use of the TASER. (...)

### **Excessive Force (in-part)**

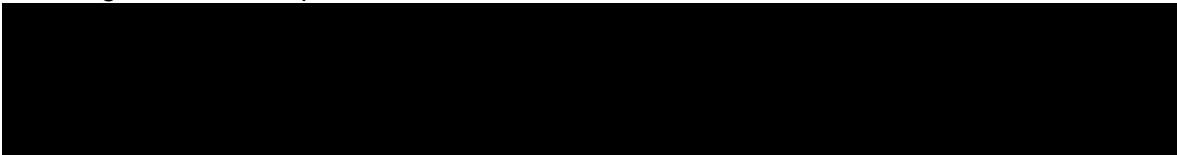
A number of factors may be taken into consideration to evaluate whether an officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances).
- The seriousness of the suspected offense or reason for the contact with the individual.
- The training and experience of the officer.
- The potential for injury to citizens, officers, and suspects.

- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.
- The prior knowledge of the subject's propensity for violence.
- Any other exigent circumstance or special knowledge (...)

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject. (...)

- iv. *Graham v. Connor*, 490 U.S. 386 (1989).  
A claim of excessive force by law enforcement during an arrest, stop, or other seizure of an individual is subject to the objective reasonableness standard of the Fourth Amendment, rather than a substantive due process standard under the Fourteenth Amendment. Moreover, the facts and circumstances related to the use of force should drive the analysis, rather than any improper intent or motivation by the officer who used force, and this force is viewed in the eyes of the reasonable officer at the scene.
- v. Tactical Patrol Guide (in part)  
Utilizing Non-Lethal Options



**ANALYSIS**

**Allegation 1: Improper Pointing of Firearm**

Ms. Dockendorff alleged Officer Blank drew and pointed his firearm at a crowd that had gathered at the scene. CPD Manual of Rules and Regulations, §1.25(A) Failure of Good Behavior states, “Members of the Department shall only draw or display their firearms in time of demonstrated need or for official inspection. Members shall not use or handle firearms in a careless or imprudent manner.” Furthermore, under CPD Procedure, §12.550 Discharging of Firearms by Police Personnel, “At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm, with finger outside the trigger guard and have it ready for self-defense. The finger is only to be placed on the trigger when on target and ready to engage a threat.”

Officer Blank stated in his CCA interview that he withdrew his firearm to neutralize Mr. Evans after TASER deployments and baton strikes from Officer Newman had no effect and he was in fear for his life. He then holstered his firearm because he did not want to shoot blindly behind himself and risk injury to others. According to BWC evidence, Mr. Evans had his arm around the neck of Officer Blank from behind and the two were on the ground. Officer Blank stated he was in fear for his life and on his BWC footage Officer Blank visibly gasped for breath. The withdraw of his firearm if it occurred at this point was permissible under these circumstances.

Alternatively, if the firearm was drawn later in the arrest, it is not unreasonable for an officer making an arrest of a violent person to assume a stranger who jumps into a fray might do so to aid the person being arrested and pose a threat to the officer. That Officer Blank acted in accordance with such belief is supported by the comments made on Officer Newman's BWC, where someone in a crowd yelled out to Officer Blank that he had pointed a firearm at him when he tried to help get Mr. Evans's arm off his neck. Officer Blank responded, "I didn't know what you were trying to do."

To be sure, BWC footage reviewed during this investigation does not confirm whether Officer Blank actually pointed his gun at any persons during the struggle. However, Officer Blank admitted that he withdrew the firearm and importantly under both theories, the circumstances presented, and where it appears from the evidence that persons in the crowd moved toward Officer Blank as he attempted to arrest an unrestrained suspect who had just choked him, Officer Blank still acted within the bounds of CPD policy. Again, CPD Procedure §12.550 Discharging of Firearm states in part that a firearm may be drawn, "At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another..." Officer Blank explained in his interview with CCA that he was fearful for his life. Given his vulnerable position on the ground, as seen in Officer Newman's BWC, the response was warranted. Therefore, he complied with §1.25(A) Failure of Good Behavior, and §12.550 Discharging of Firearms by Police Personnel.

## **Allegation 2: Excessive Force**

Ms. Dockendorff alleged Officer Newman and Blank used excessive force against Mr. Evans. CPD Procedure §12.545 Use of Force, in-part, states, "just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control." Moreover, Officers should use, "non-confrontational verbal skills, empathy, and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance, and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force. (...) Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend promptly."

In this case, before using force, Officer Blank took appropriate steps to deescalate the situation when Mr. Evans began to become confrontational. Officer Blank responded in a non-confrontational tone when he addressed Mr. Evans, gave him every opportunity to cooperate while he gained his information for the ticket, repeatedly warned him, and gave clear and concise commands. Officer Blank in his CCA interview believed he had been more than respectful and courteous to Mr. Evans, and this is substantiated in his BWC. Officer Blank explained the situation to Mr. Evans and that he would simply receive a ticket for his behavior. Once Mr. Evans punched Officer Blank and grabbed a hold of him, the use of force to make an arrest was clearly permitted under policy. The assault continued and the option to disengage was impractical, based on how Mr. Evans wrapped his arms around Officer Blank, as shown in Officer Newman's BWC.

CPD Procedure §12.545 Use of Force, continues in-part, "A police officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. (...) The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

In this case, according to his BWC, Officer Blank told Mr. Evans that he was under arrest when he stood up and tried to leave the scene. Officer Blank placed his hand on Mr. Evans's arm. This was just acceptable force to try and control Mr. Evans and stop him from what appeared to be an attempt to evade arrest. Mr. Evans then attacked Officer Blank with a punch to the face, which escalated the situation drastically.

CPD Procedure §12.545 Use of Force continues, "Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject." Furthermore, "a claim of excessive force by law enforcement during an arrest, stop, or other seizure of an individual is subject to the objective reasonableness standard of the Fourth Amendment, rather than a substantive due process standard under the Fourteenth Amendment." *Graham v. Connor*, 490 U.S. 386 (1989). In other words, the facts and circumstances related to the use of force should drive the analysis, rather than any motivation by the officer who used force, and this should be evaluated in the light of what a reasonable officer at the scene would have done.

Evaluating Officer Newman, she responded as fast as she could to the attack upon Officer Blank. She withdrew her TASER and used it on Mr. Evans. Officer Newman's actions indicate that other officers on the scene perceived the threat as being sufficient to justify significant force, strengthening the argument that Officer Blank's use of force met the "reasonable officer" standard.

Importantly, CPD Procedure §12.545 states "The Taser may be deployed on a suspect actively resisting arrest when there is probable cause to arrest the suspect, or to defend oneself or another from active aggression." The attempted arrest turned to that of threat of injury to Officer Blank when Mr. Evans grappled him. Officer Newman's response was also acceptable. Moreover, Officer Blank was under attack and the TASER was an acceptable use of force to stop the attack. Furthermore, Officer Newman warned Mr. Evans that he was about to get tased if he did not let go of Officer Blank, thus procedurally the tase was warranted and conducted properly.

The evidence then established when the TASER had no effect on Mr. Evans, Officer Blank used Hard Hands, "which include(s) the use of physical pressure to force a person against an object or the ground," and swept Mr. Evans's leg, which caused him to fall. If successful, this might have ended the situation. However, Officer Blank also fell, and Mr. Evans choked Officer Blank from behind.

As already stated, Officer Blank stated that he was fear for his life and the choke upon him added to those fears. According to, §12.545, "life threatening assault or assault likely to cause serious physical harm, (is defined when the) subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death (and the Officer may respond accordingly)." The placement of Mr. Evan's hand around Officer Blank's neck suggests PO Blank faced such a threat here therefore the maneuver was warranted and within policy.

Officer Newman then deployed her baton after she tased Mr. Evans for a third time, while he and Officer Blank were on the ground, and repeated a tasing that still had no effect. She then started to strike Mr. Evans's leg with the baton. The strikes also failed to stop Mr. Evans. Section 12.545 of the Procedure Manual states the following regarding batons: "Monadnock Auto-Lock Batons are impact tools that offer a less lethal method for self-defense, defense of another, or subduing and apprehending subjects who are actively resisting arrest. Compared to empty hand counter

strikes, the baton is less likely to cause injury to the officer and provides added distance from the subject. Officers should target center mass of a subject's torso, arms, and legs, and avoid the subject's head, throat, neck, heart, and groin, unless threatened with serious physical harm." BWC shows that Officer Newman exercised restraint and aimed the baton strikes at the legs of Mr. Evans, even though the situation suggested a serious threat to the loss of life.

Eventually, a bystander helped get Mr. Evans's arm off Officer Blank's neck and Officer Blank was able to handcuff Mr. Evans with Officer Newman's help. All force ceased as soon as handcuffs were effectuated upon Mr. Evans, and he appeared to finally stop resisting on Officer Newman's BWC.

Overall, according to §12.545, "A number of factors may be taken into consideration to evaluate whether an officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances).
- The seriousness of the suspected offense or reason for the contact with the individual.
- The potential for injury to citizens, officers, and suspects.
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.

In this case, the evidence proves that Mr. Evans stated that he was not going to be arrested, physically appeared to attempt to walk away from Officer Blank, attacked Officer Blank, appeared to be under the influence of alcohol, continued to elevate the threat of injury to Officer Blank, and fought through the hard hand, baton, and TASER deployments. All these factors show Officer Blank and Newman faced a formidable threat and significant physical resistance, yet stayed within policy, procedure, and the law. They did not exceed the force required to effectuate an arrest. The force they used was objectively reasonable.

## FINDINGS

### Original Allegations

Officer Barnabas Blank  
Officer Merredeth Newman

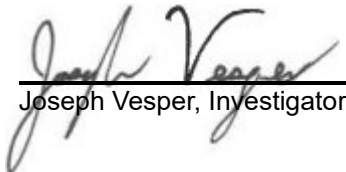
**Excessive Force** - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

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Officer Barnabas Blank

**Improper Pointing of Firearm** - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

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Joseph Vesper, Investigator



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Gabriel Davis, Director

**PREVIOUS  
CONTACTS AND  
COMMENDATIONS**

**Officer Barnabas Blank**

**Previous Contacts with CCA**

Officer Blank had 2 previous contacts with CCA in the past three years.

| <b>Case Number</b> | <b>Allegation</b>                     | <b>Finding</b> |
|--------------------|---------------------------------------|----------------|
| 20014              | Improper Stop                         | Exonerated     |
| 20014              | Improper Pointing of Firearm          | Exonerated     |
| 19227              | Failure to Report Use of Force        | Sustained      |
| 19227              | Use of Force                          | Exonerated     |
| 19227              | Improper Stop                         | Exonerated     |
| 19227              | Procedure (Fail to notify Supervisor) | Sustained      |
| 19227              | Use of Force                          | Exonerated     |
| 19227              | Discourtesy                           | Sustained      |

**Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Officer Blank with IIS.

**Commendations**

Officer Blank received 2 commendations in the past three years.

| <b>Date</b> | <b>Source of Commendation Received</b> |
|-------------|--|
| 10/6/2020   | CPD                                    |
| 6/17/2019   | CPD                                    |

**Officer Merredeth Newman**

**Previous Contacts with CCA**

Officer Newman had 0 contacts with CCA in the past three years.

**Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Officer Newman with IIS.

**Commendations**

Officer Newman received 1 commendation in the past three years.

| <b>Date</b> | <b>Source of Commendation Received</b> |
|-------------|--|
| 9/6/2018    | CPD                                    |